

MTSA/ISPS POLICY ADVISORY COUNCIL

October 26, 2004

Issue/Discussion/Decision

Determining Which Foreign Yachts are Subject to SOLAS

44-04

FINAL

Issue (44-04): With regards to foreign yachts, what does the term “subject to SOLAS” mean?

Decision: In accordance with G-LMI Memorandum of #16614, dated October 5, 2004, a pleasure yacht not engaged in trade (i.e., is not carrying passengers for hire) is generally not subject to SOLAS, irrespective of its size, its numbers of passengers (as defined by SOLAS), or the international nature of its voyage.

The applicability section of SOLAS, Chapter XI-2 incorporates the general SOLAS applicability scheme. Although Chapter XI-2, Regulation 2 states that it applies to “passenger ships” and “cargo ships, including high speed craft, of 500 GT and upwards”, these categories are modified by the general exceptions to applicability of Chapter I, Regulation 3. In other words, the general exceptions of Chapter I carry forward to the specific provisions of Chapter XI-2. Thus, a pleasure yacht not engaged in trade is not subject to the specific provisions of ISPS.

When visiting a yacht, the role of a boarding officer or marine inspector would be to determine which SOLAS documents that it possesses, and whether it possesses these documents voluntarily.

As a rule of thumb, a vessel that voluntarily carries one SOLAS document, such as an ISSC, but is lacking a full complement of SOLAS documents indicates that the vessel is complying voluntarily with SOLAS, or portions of SOLAS. Often times owners of vessels that voluntarily carry a SOLAS document do so to prove to another nation their certification to an international standard with regards to its safety equipment or security provisions. For example, a privately-owned vessel of 300 GT may voluntarily carry a Cargo Ship Safety Equipment Certificate as evidence that it has certain lifesaving gear onboard as an alternative to complying with 46 CFR Subchapter I, as required in 46 CFR 90.05-1.

On the other hand, a vessel would need to carry a complement of SOLAS certificates in order to comply with SOLAS. These certificates could include a Passenger Ship Safety Certificate (PSSC), Cargo Ship Safety Construction Certificate (CSSCC), Cargo Ship Safety Equipment Certificate (CSSEC), Cargo Ship Safety Radio Certificate (CSSRC), Safety Management Certificate (SMC), and/or an International Ship Security Certificate (ISSC). Possessing a full complement of certificates is one important indicator that the yacht is/was at one point engaged in trade. However, there remain circumstances when owners of yachts decide to get these documents voluntarily and in these cases, the yacht would not be subject to SOLAS.

An owner cannot “turn on” or “turn off” their SOLAS documents. When a flag state determines that a vessel is required to meet SOLAS requirements and issues certificates verifying such conditions, the vessel must act in accordance with the documents in all operating conditions, regardless of whether involved in trade or not.

The below examples are illustrated in an attempt to clarify this statement, and give situations where pleasure yachts are or are not “subject to SOLAS.”

Example 1: A privately owned yacht engaged in trade arrives in port with a PSSC, SMC, and an ISSC. This yacht is “subject to SOLAS”. The vessel would be required to moor at a facility in compliance with 33 CFR Part 105 since the vessel carries the complement of certificates needed to demonstrate compliance with SOLAS.

Example 2: A privately owned yacht not engaged in trade arrives in port with a PSSC, SMC, and an ISSC. This yacht is “subject to SOLAS” because the flag state has issued them certificates indicating they are authorized to engage in trade. The vessel would be required to moor at a facility in compliance with 33 CFR Part 105. Despite the fact that there is no evidence that the vessel is engaged in trade, the vessel carries the complement of certificates necessary to prove that it has the intent to comply with international regulation. Steps that the vessel could take to reverse this intent would be to have the flag state remove certain documents or for the flag state to provide documentation onboard the vessel stating that the vessel is operating outside of the boundary of the certificates.

Example 3: A privately owned yacht, greater than 300 GT, not engaged in trade arrives in port with a CSSEC. This yacht is not “subject to SOLAS”. The vessel would not be required to moor at a facility in compliance with 33 CFR Part 105 since the vessel is in possession of a single document that only proves to the United States that it carries an equivalent amount of lifesaving equipment that is required by 46 CFR Subchapter I.

Example 4: A privately owned yacht, greater than 300 GT, not engaged in trade arrives in port with a CSSEC. This yacht is not “subject to SOLAS”. This vessel would not be required to moor at a facility in compliance with 33 CFR Part 105, as in Example 3. The fact that the vessel possesses a certificate reading “Cargo Ship” does not automatically make it a cargo vessel as defined in MTSA. MTSA defines a cargo vessel in 33 CFR 101.105 as a vessel that carries, or intends to carry any goods, wares, or merchandise for consideration. A yacht not engaged in trade would not meet the MTSA definition of cargo vessel and not need to moor at a Part 105 facility.

Example 5: A privately owned yacht of 500 GT with 50 passengers onboard and engaged in trade (i.e., is carrying one or more passengers for hire) arrives in port with only a CSSEC. This yacht is “subject to SOLAS”. The vessel would be required to moor at a facility in compliance with 33 CFR Part 105 since the vessel meets the applicability of SOLAS as a passenger vessel. It is anticipated that the COTP would be able to identify port call non-compliance with 33 CFR Chapter I, Subchapter H before the vessel’s mooring, since vital information will be provided through the Notice of Arrival regulations in 33 CFR Part 160. When the vessel moors, the COTP should also investigate the reasons the vessel does not carry a PSSC, ISSC, and SMC.

Example 6: A privately owned yacht, greater than 300 GT, not engaged in trade arrives in port with only an ISSC. Upon investigation, the Master reveals that the vessel carries this document on a voluntary basis, due to his concerns of international security threats. This yacht is not “subject to SOLAS”. This vessel would not be required to moor at a facility in compliance with 33 CFR Part 105, since the vessel obtained the certificate voluntarily. The COTP may need to investigate the reasons the vessel does not comply with 46 CFR 90.05-1 and carry a COI or CSSEC.

Example 7: A privately owned yacht, greater than 300 GT, not engaged in trade arrives in port with an ISSC and CSSEC. The yacht obtained the CSSEC in order to meet the requirements of 46 CFR Subchapter I. It obtained the ISSC when reading the applicability of ISPS and believing that the Code was applicable to vessels not engaged in trade. Learning that the applicability of ISPS mimics the applicability of SOLAS, the Master learns that he is not required to possess the ISSC, but voluntarily decides to maintain its provisions. This yacht is not “subject to SOLAS”. As in Example 6, this vessel would not be required to moor at a facility in compliance with 33 CFR Part 105, since the vessel obtained the certificates voluntarily.

Example 8: A privately owned yacht of 200 GT and not engaged in trade arrives in port with no SOLAS documents. This yacht is not “subject to SOLAS”. MTSA regulations would not require the vessel to moor at a facility in compliance with 33 CFR Part 105. This vessel is not subject to 46 CFR Subchapter I, since it is not a motor, sea-going vessel greater than 300 GT.

Example 9: The owner of a privately owned yacht provides his vessel to a charter party [Time or Voyage charter]. At the time of the charter, the yacht carries the complement of documents necessary to determine that it is “subject to SOLAS”. Since the charter is a bareboat charter, the vessel would not maintain the status of being “subject to SOLAS”. The yacht would not need to moor at facilities in compliance with 33 CFR Part 105 for the duration of the charter. At the end of the charter and the return of the yacht to the original owners, the yacht would return to a “subject to SOLAS” designation.

Example 10: The owner of a privately owned yacht provides his vessel and a crew to a charter party [Time or Voyage charter]. At the time of the charter, the yacht carries the complement of documents necessary to determine that it is “subject to SOLAS”. Since the charter is not a bareboat charter, the vessel would maintain the status of being “subject to SOLAS”. The yacht would need to moor at facilities in compliance with 33 CFR Part 105 for the duration of the charter, as well as periods before and after the charter.